

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Linda C. Johnson,
Commissioner, Department of Human Rights,
Complainant,

FACT,

vs.

Floyd Wild, Inc.,

Respondent.

FINDINGS OF

CONCLUSIONS AND
ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson from the State Office of Administrative Hearings on Wednesday, May 15, 1985 in the Lyon County Courthouse in Marshall, Minnesota. The record on this matter remained open through July 22, 1985 for the submission of post-hearing briefs.

Mary J. Theisen, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant, Department of Human Rights. Patrick J. Leary, from the firm of Quanrstrom, Doering, Pederson, Leary & Murphy, Attorneys at Law, 109 South 4th Street, Marshall, Minnesota 56258-1396, appeared on behalf of the Respondent, Floyd Wild, Inc.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether: (1) the Respondent discriminated against the charging party, Janice Belsheim (Janice Wild at the time the alleged discrimination occurred), on the basis of marital status in violation of Minn. Stat. 363.03, subd. 1(2)(b) and (c) (1982); and (2) the Respondent is exempt from Chapter 363 pursuant to Minn. Stat. 363.02, subd. 1 (1982). .

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Floyd Wild, Inc. is a closely held, family corporation with 523 shares of stock outstanding. Floyd Wild is the President and a Director of the

corporation and owns 314 shares of stock; Adeline ("Boots") Wild, Floyd's wife, is the Secretary-Treasurer of the corporation and owns 15 shares of stock; Lenny Wild, a son, is the Vice-President and a Director of the corporation and owns 96 shares of stock; Dennis Wild, a son, is a Vice-President and a Director and owns 50 shares of stock; and Judy Wild, a daughter, is a Director and owns 48 shares of stock. The corporation is authorized to issue up to 2,500 shares to stock. Floyd Wild, Inc. was incorporated in 1969 and is located outside of Marshall, Minnesota. The business was begun in 1946 in the same location..

2. Floyd Wild, Inc., is a trucking firm which employs approximately 35 persons, 20 of whom are truck drivers. In addition to the drivers, the company employs dispatchers, office and bookkeeping personnel, and shop-repairmen. Dennis Wild is the shop foreman; Lenny Wild is a full-time dispatcher; and Adeline is a part-time bookkeeper. Floyd Wild manages the company, makes the decisions to hire or fire employes, and spends much of his time in the office. Judy Wild no longer works for the business because she lives out of state. (This Finding describes the employment situation at Respondent in 1982, when the alleged discrimination occurred.)

3. In 1972, Dennis Wild's wife, Janice, began working as a bookkeeper-secretary in the company office. Dennis and Janice had been married in March of 1971 and Janice began working for the company after the birth of their first child. At that time, Janice expressed an interest in going back to work and was invited to begin employment at Floyd Wild, Inc. because Adeline Wild wanted to cut back on her job duties as the bookkeeper-secretary.

4. In 1972, the company office was located in the basement of the Wild (Floyd and Adeline) home. The repair shop was located in another, separate building. In 1979, a one-stall "garage" was constructed as an attachment to the home to house the company office.

5. Janice Wild's job duties as a bookkeeper-secretary for Respondent corporation included typing, making out the payroll, doing fuel reports, monthly and quarterly business reports, group insurance work, office cleaning, and other miscellaneous work. Ms. Wild, along with the other members of the Wild family, had authority to sign checks for the company. In addition to her regular job duties, Janice Wild would occasionally help Adeline Wild with "personal" activities inside the Wild home, such as decorating.

6. Janice Wild worked part-time for the corporation, although her hours gradually increased over the period of her employment. Between June of 1981 and June of 1982, Ms. Wild worked an average of 14.76 hours per week. From January through July of 1982, she worked an average of 16.73 hours per week. Because Ms. Wild only worked part-time, she did not receive the employee "benefits" offered to full-time employees. When Janice's employment was terminated in August of 1982, she was making \$6.30 per hour.

7. During Janice Wild's employment with Floyd Wild, Inc., her work

performance was always more than satisfactory. Floyd Wild had told Janice on more than one occasion that she could work as many hours as she wanted because there was as much work there as she wanted to do.

8. In June of 1982, Janice Wild decided to seek a divorce from her husband, Dennis. They discussed this between themselves and determined to attempt an amicable dissolution, both using the same attorney. However, after one meeting with Ms. Wild's attorney, Ann LaPort, Dennis Wild decided to obtain his own counsel. In July, 1982, Mr. Wild was served with "divorce papers" by his wife. Dennis felt that Janice's "demands", as set forth in the pleadings, were unreasonable. Subsequently, the divorce proceeding became very embittered through the summer and fall of 1982. Janice and Dennis continued to live in the same home until September, when Ms. Wild moved out. Dennis and Janice had two children, both daughters, born in 1971 and 1974.

9. In early July of 1982, Dennis informed his father, Floyd Wild, of Janice's intention to get divorced. Subsequent to that, Floyd had the following contacts with Janice regarding the impending divorce.

a. On July 14, 1982, Floyd Wild went to Janice's home to speak with her. Floyd told Janice that he was proud of the job she had been doing and that he loved her like a daughter. Janice responded only that she was intending to go through with the divorce.

b. On July 19, 1982, Floyd approached Janice at work and suggested that she and Dennis seek marriage counseling. Janice responded that she was intending to get divorced and she would not go to counseling. Additionally, Janice told Wild that she wanted to continue working for the company after the divorce. Floyd stated that it was his office and that if he decided to do her job, there would be no job for her. Floyd said that Janice's continued employment would not work after a divorce. After these statements, Janice Wild told Floyd that she did not think that he could legally fire her.

c. On July 20, 1982, Floyd Wild approached Janice in the office and asked her again if she would seek marriage counseling. Janice told Floyd that she would not and nothing had changed from the day before. At that time, Floyd Wild told Janice not to sign any more checks for the company and revoked her check-signing privileges. Also, Floyd told Janice that if she was not going to seek marriage counseling, she should look for a new job in two weeks, which was August 3, 1982. Ms. Wild wrote on her office calendar that August 3 would be her last day at work.

d. On July 21, 1982, Dennis Wild brought home a note written by Floyd Wild and gave it to Janice. The note states in part: "All I am asking is that if you and Dennis will seek counseling to try to work out a mutual agreement, you can keep on working through this period. If after this you cannot agree, we will negotiate a working arrangement on a different level of business agreement." This note was never further explained to Janice by Floyd.

e. On July 27, 1982, Floyd and Adeline Wild, and both of Janice's parents, came to Ms. Wild's home to talk with her about the impending marriage dissolution. Nothing was said during this discussion concerning Janice's continued employment with Respondent.

f. On July 28, 1982, Floyd Wild and Janice's father, John Belsheim, spoke with Janice at work. Both Floyd and Mr. Belsheim attempted to convince Janice to seek counseling. Janice stated that she would not go to counseling and that she felt she could still continue to work for Respondent. Both Floyd and Mr. Belsheim stated that it would not be possible for Janice to continue to work at the company after a divorce .

10. Because Janice Wild was upset about the loss of her job and the fact that her relatives would not accept the impending divorce, she went to see Mavis Moret, a psychiatric social worker in Marshall, Minnesota. Ms. Wild sought Ms. Moret's assistance primarily to help her cope with the reactions of her family to the pending dissolution.

11. In early 1982, Respondent had purchased a car for Dennis and Janice but the monthly car payments were deducted from Dennis's salary. Because Dennis Wild was a full-time employee, he was provided with medical insurance by Respondent. Janice was carried as a dependent on her husband's policy. Ms. Wild received two weeks of paid vacation per year while working at Floyd Wild, Inc.

12. After being informed by Floyd Wild that she could remain employed for only two more weeks if she did not seek counseling, Janice began to look for other employment.. On August 9, 1982, Ms. Wild began working for Wilson O'Brien Realtors in Marshall, Minnesota as an assistant office manager/secretary. She has remained employed there to the present time. Ms. Wild continued her part-time employment with Floyd Wild, Inc. through August 19, 1982 in order to train the employee who was supposed to take over her duties.

13. In late 1982 and early 1983, after Janice Wild had left Respondent's employ, the payroll function was computerized.

14. Janice Wild began her employment at Wilson O'Brien Realtors at the wage of \$4.75 per hour. At the present time, she makes \$6.00 per hour and works 37-40 hours per week and pays for her own medical insurance coverage. Dennis and Janice Wild's contested divorce was resolved pursuant to an Order for Judgment issued by the Honorable George Marshall, Judge of County Court, Lyon County, on January 27, 1983.

15. In January of 1983, Janice Wild filed a charge of discrimination with the Minnesota Department of Human Rights. A department "charge form" was not completed and docketed with the department until March 31, 1983, however. Subsequent to filing the charge, the Commissioner of Human Rights found probable cause that discrimination had occurred on or about July 24, 1984. A complaint was issued by the department on March 19, 1985, and an amended

complaint issued on April 16, 1985.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction over this matter pursuant to Minn. Stat. 363.071 and 14.50 (1982). All relevant substantive

and procedural requirements of statute or rule have been complied with by the Department of Human Rights.

2. Respondent is an employer as defined in Minn. Stat. 363.01, subd. 15 (1982).

3. Minn. Stat. 363.02, subd. 1(1)(a) does not exempt Respondent from the application of the Minnesota Human Rights Act.

4. Respondent did not discriminate against Janice Belsheim on the basis of marital status when it revoked her check-signing privileges or when it terminated her in 1982.

5. The Memorandum below is incorporated by reference herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the complaint herein is dismissed.

Dated this 19 day of August, 1985.

PETER C. ERICKSON
Administrative Law Judge

MEMORANDUM

The pertinent provisions of Minn. Stat. Ch. 363, the Minnesota-Human Rights Act, read as follows:

363.03, subd. 1. Except when based on a bona fide occupational qualification, it is an unfair employment practice:

(2) For an employer because of ... marital status,...

(b) To discharge an employee; or

(c) To discriminate against a person with respect to his ... terms ... conditions or privileges of employment.

363.02, subd. 1. The provisions of section 363.03, subd. 1., shall not apply to:

(1) The employment of an individual

(a) by his parent, grandparent, spouse, child, or grandchild...

The first issue that must be addressed is whether Respondent is exempt from the application of Chapter 363 pursuant to Minn. Stat. 363.02, subd. 1(1)(a). The record in this matter shows clearly that Janice Wild was an employee of Floyd Wild, Inc., a Minnesota corporation. Although the stockholders of the corporation are all Wild family members and the business is managed by Floyd Wild, the law is clear that a corporation is a legal entity separate from its shareholders. *Milwaukee Motor Transportation Company v. Commissioner of Taxation*, 292 Minn. 66, 193 N.W.2d 605 (1972). Respondent has cited no authority which would permit the Administrative Law Judge to disregard its corporate status and find that a stockholder or corporate director was the employer. In this case, Floyd Wild did all of the hiring and firing for Respondent. Floyd's relationship to the charging party is that of a father-in-law, which is not included within the exemption provision of Minn. Stat. 363.02, subd. 1. The Administrative Law Judge thus concludes that Respondent is not exempt from the application of the Minnesota Human Rights Act.

The Respondent contends that Janice Wild voluntarily left her employment with Floyd Wild, Inc.; that she was not terminated. However, the record in this matter clearly shows Ms. Wild's continued employment with Respondent was absolutely contingent upon her seeking marriage counseling to save the marriage. She was told by Floyd Wild that if she did not seek counseling, she should look for a new job. At the time that statement was made, Ms. Wild's check-signing privileges were revoked. Floyd Wild also sent Janice a written note which again stated that her continued employment was contingent upon an agreement to go to marriage counseling. Although there was never a statement from Floyd Wild to Janice that she was "fired", there is no question in the Judge's mind that Floyd terminated Janice as a result of her failure to seek counseling. Consequently, Ms. Wild left her employment on August 19, 1982,

after she had trained a new employee and due to her continued refusal to seek counseling.

In order to prove a case of discrimination, complainant must show that:

(1) the charging party is a member of a protected class; (2) he/she applied and was qualified for a job for which the employer was seeking applicants; (3) despite his/her qualifications, he/she was rejected; and (4) after his/her rejection, the position remained open and the employer continued to seek applications from persons having similar qualifications. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Hubbard v. UPI, Inc. 330 N.W.2d 428, 442 (Minn. 1983). If this prima facie showing is made, the burden then shifts to respondent to articulate a legitimate, non-discriminatory reason for its action. If the respondent carries this burden, then the complainant must show that the reason articulated is merely a pretext for discrimination. The overall burden of persuasion remains with the complainant. Hubbard at 443. However, the elements required to prove a prima facie case may vary from case to case depending on each set of differing factual circumstances. Danz v. Jones, 263 N.W.2d 395 (Minn. 1978).

The term "marital status" as used in Chapter 363 includes as a protected class persons who are married or not married and also persons against whom action is taken by an employer based upon the identity or situation of the person's spouse. *Cybyrsky v. ISD* No. 196, 347 N.W.2d 256, 260-261 (Minn. 1984); *Kraft, Inc. v. State*, 284 N.W.2d 386, 388 (Minn. 1979). Complainant has shown that Janice Wild was a member of a protected class; that she was performing her job in a satisfactory manner; that her check-signing privileges were revoked due to the fact that she was seeking a divorce; and that she was terminated because a decision to refuse marriage counseling and go ahead with divorce proceedings. On its face, these actions were taken by the employer because of the prospective change in Janice Wild's marital status. However, the Judge has concluded that Respondent did not discriminate against Ms. Wild in violation of Minn. Stat. Ch. 363. The reasons for that conclusion are set forth below.

In *Cybyrsky*, the Minnesota Supreme Court stated that it adheres to a broad construction of the term "marital status" as set forth in the *Kraft* decision. *Cybyrsky* at 261. In *Kraft*, the Respondent refused to hire spouses of full-time employees on a full-time basis. The *Kraft* court stated that "...absent a compelling and overriding bona fide occupational qualification, an anti-nepotism employment rule denying full-time employment to individuals married to persons already employed full-time by the employer constitutes a discriminatory practice based on marital status within the meaning of the Minnesota Human Rights Act.

In *Cybyrsky*, a teacher brought an action, in part under the Minnesota Human Rights Act, alleging she was not hired for a teaching position because of the pro-teacher sentiments of her husband, a member of a neighboring school board. The court stated that in determining whether marital status discrimination exists under Chapter 363, the identity and situation of the spouse is an important factor. *Cybyrsky* at 261. The court went on to hold that the petitioner did not have a cause of action for marital status discrimination under the Minnesota Human Rights Act because the immediate reason for the discrimination was due to the "political status" of the spouse, and not directed at the institution of marriage itself. In discussing the inapplicability of the Human Rights Act, the court cited, *Marital Status Discrimination: An Amorphous Prohibition*, 54 Fla. B.J. 217 (1980), wherein the author listed six areas where courts have been willing to find marital status discrimination by employers: (1) where employees are required to be either single or married; (2) anti-nepotism rules; (3) refusal to hire unwed mothers; (4) refusal to hire women with dependents while hiring men with dependents;

(5) the hiring of married couples only; and (6) requiring female employees to change their last names upon marriage. Id. footnote 4. Cybyske at 261, fnt. 4.

in a subsequent decision issued by the Office of Administrative Hearings, it was held that the Respondent, Kraft, did not prove a "BFOQ" to support its anti-nepotism policy. HR-77-035-PE (decision issued July 1, 1982). This matter was settled while on appeal.

'The question herein becomes whether this fact situation involving family membership in a business setting properly falls within the prohibitions of Chapter 363. The Judge thinks not. The record shows that Janice Wild initially became employed with Respondent in part because she was a member of the Wild family. Janice was allowed to set her own work schedule and work as many hours as she wanted. When Ms. Wild began her employment, the office was located in the Wild home basement. Since 1979, it was located in an attached "garage". Janice Wild would occasionally help Adeline Wild with "personal" activities and Floyd Wild testified that he loved Janice like a daughter. Floyd Wild testified additionally that he was trying to save the marriage for the sake of his grandchildren.

The record in this matter shows that the reason Janice Wild's check-signing privileges were revoked and she was terminated from employment was because of the embittered divorce proceeding and the fact she was "leaving" the family. To characterize these actions as marital status discrimination is only a skin-deep approach. Janice Wild was terminated months before her marital status actually changed due to the detrimental effect of the divorce proceedings on the family members. Respondent's actions were not aimed at marital status per se. Rather, they were the result of Ms. Wild's rejection of attempts to keep the family together. These actions by the Respondent do not fall within the parameters of the prohibitions contained in Minn. Stat. Ch. 363 because they were not aimed at the institution of marriage itself. Cybyske at 261.

The legislature obviously recognized the inapplicability of Chapter 363 when personal, family relationships are involved when it enacted Minn. Stat.

363.02, subd. 1(1)(a). The fact situation herein is not covered by that statute as discussed above. Additionally, claims of "facial" discrimination have been rejected by the courts when the record reveals that personal relationships are the basis for the action taken. See, Huebschen v. Department of Health and Social Services, 716 Fed. 2d 1167 (7th Cir. 1983); Choban Realty Company v. State, (decision issued by the Honorable John J. Daly, Judge of District Court, First Judicial District, April 26, 1983, File

Number 94310).

Based on the above discussion, the Judge has concluded that the complaint must be dismissed.

P.C.E.